

Publications

Title VII Prohibits Exclusion of Prescription Contraceptives from Comprehensive Prescription Coverage under Employer's Health Plan.

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Failure to cover prescription contraceptives under a health plan that provides generally comprehensive prescription coverage violates Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, according to the June 12, 2001 opinion issued by the United States District Court for the Western District of Washington. In reaching its decision in *Erickson v. Bartell Drug Co.*, No. C00-1213L (W.D. Wash. June 12, 2001), the court interpreted Title VII to require equally comprehensive coverage for men and women. "In light of the fact that prescription contraceptives are used only by women, Bartell's choice to exclude that particular benefit from its generally applicable benefit plan is discriminatory."

Bartell raised six specific defenses, all of which were rejected by the court. Bartell was incorrect in arguing that contraceptives do not treat an illness or disease and therefore do not raise a "healthcare" issue, according to the court, because "the availability of affordable and effective contraceptives is of great importance to the health of women and children."

The court rejected Bartell's argument that prevention of pregnancy is not covered by the PDA, which prohibits discrimination based on pregnancy, childbirth or related medical conditions. In the court's view, regardless of whether the exclusion of prescription contraceptives is specifically covered by PDA, it constitutes sex discrimination generally prohibited under Title VII.

The court also rejected Bartell's cost defense, explaining that, while an employer is free to limit benefits offered to its employees to keep costs low, it must use non-discriminatory benefit limitations to control costs, not limitations that apply only to women.

Bartell argued that the exclusion for prescription contraceptives fell within an exclusion for drugs for "family planning," which was neutral and therefore non-discriminatory. Although the plan excluded infertility drugs, the court found no express exclusion for family planning drugs, and concluded that, even if it existed, the

exclusion of prescription contraceptives, alone or in combination with an exclusion for infertility drugs, is neither neutral nor equal.

The court recognized, but found no merit in Bartell's argument that no court had previously concluded that excluding prescription contraceptives violated Title VII. The Erickson decision appears to be the first court opinion addressing this issue. The EEOC, however, issued an opinion on December 14, 2000 reaching the same conclusion.

Finally, the court rejected Bartell's argument that the issue should be addressed by the legislature, rather than the courts, noting that federal and state legislative proposals addressing this issue would have a broader reach than Title VII.